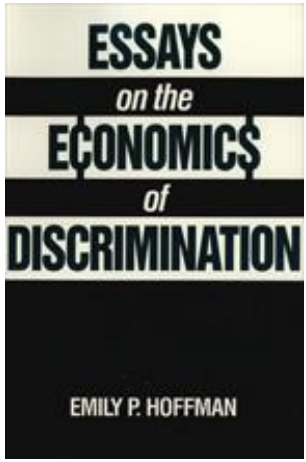
The Federal Anti-Bias Effort



Jonathan S. Leonard
University of California

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Jonathan S. Leonard
University of California

Affirmative action under the federal contract compliance program (Executive Order 11246 as amended) is a policy that, at times, has promoted modest employment advances for minorities, but always at the cost of great social discord. To its proponents, affirmative action is both equitable and efficient. To its critics, it is neither.

Federal affirmative action may be modeled as a tax on white male employment in contractor firms, and so can be analyzed in the standard two-sector models applied to unionization or taxation (Leonard 1984a). A controversial question is whether this tax improves or reduces efficiency. Some proponents of affirmative action advocate it for equity reasons, arguing for retribution for past wrongs such as slavery, or for an investment in future social peace and cohesion. Increased equity may also improve efficiency by counterbalancing discrimination. In Becker's model of discrimination, for example, an affirmative action tax forces employers towards the efficient use of labor (Leonard 1984c). The two questions to be asked of affirmative action are first, whether it has increased minority and female employment, and second (and more difficult), whether this has induced or reduced discrimination.

The purpose and development of affirmative action cannot be fully understood outside of history, a history that includes most saliently the institution of slavery in the eighteenth and nineteenth centuries, and the civil rights movement of the mid-twentieth century. The genesis in discord and crisis of the first Executive Order by President Roosevelt is most instructive. To protest employment discrimination at the beginning of World War II, A. Philip Randolph, president of the Sleeping Car Porters Union, threatened to disrupt the defense effort by a mass demonstration of blacks in Washington, D.C. on July 1, 1941. Less than one week before

the planned rally, Executive Order 8802 was issued and the demonstration called off (Goldstein 1981, p. 10). In the words of the U.S. Commission on Civil Rights, "the Executive Order was prompted by the threat of a Negro March on Washington, which would have revealed to the world a divided country at a time when national unity was essential" (USCCR 1961, p. 10). Accommodation was only reached under dire threat, and even then was of a limited nature.

The distance this country has come in terms of the growing import of affirmative action, expanding intervention by the federal government, and changing attitudes towards discrimination since 1941 can best be judged by considering the words of Mark Ethridge, first chairman of the Fair Employment Practice Committee, established to supervise compliance with the executive order. In the following quote, Ethridge sharply limits the scope of antidiscrimination policy in a manner startling to modern eyes.

> Although he defended the granting of civil rights and equal opportunity to Negroes, he also affirmed his personal support of segregation in the South. Stressing that 'the committee has taken no position on the question of segregation of industrial workers,' he emphasized that 'Executive Order 8802 is a war order, and not a social document,' that it did not require the elimination of segregation, and that had it done so, he would have considered it 'against the general peace and welfare . . . in the Nazi dictatorial pattern rather than in the slower, more painful but sounder pattern of the democratic process.' (Ruchames 1953, p. 28)

Of course, the delicate question of how to swiftly remedy the harm done by discrimination without distorting the democratic process is still with us, as is the question of whether the democratic process can function well outside an integrated society. Democratic society requires a consensus for change, but it depends upon the full participation of its members. The last 40 years have witnessed a slow and at times painful process of confrontation and accommodation, developing a consensus that provides the foundation for a lasting change in attitudes towards discrimination.

Prior to Executive Order 10925, issued March 6, 1961 by President Kennedy, the antidiscrimination program for federal contractors lacked any real teeth. In a detailed study of the presidential Fair Employment Practice Committees, Norgren and Hill (1964, p. 169, p. 171) state: "One can only conclude that the twenty years of intermittent activity by presidential committees has had little effect on traditional patterns of Negro employment," and that "it is evident that the non-discrimination clause in government contracts was virtually unenforced by the contracting agencies during the years preceding 1961." Compliance programs, such as Plans for Progress and its predecessors, were voluntary. Their history strikes at least a cautionary note about the effectiveness of programs that have no legal sanctions behind them. The 1961 Executive Order was the first to go beyond antidiscrimination and to require contractors to take affirmative action, and the first to establish specific sanctions including termination of contract and debarment. Coming on the heels of Title VII of the Civil Rights Act of 1964, Executive Order 11246, which made the Secretary of Labor rather than a presidential committee responsible for administering enforcement, was the first to be enforced stringently enough to provoke serious conflict and debate. On October 13, 1967, Executive Order 11375 amended 11246 to expand its coverage to women, although effective regulation against sex discrimination did not reach full stride until after the Equal Employment Act of 1972 was enacted.

The details of the affirmative action obligation began to be elaborated in a twisting history. Detailed regulations, including numerical goals, were introduced in 1969, after the Comptroller General ruled that the affirmative action obligation was too vague to fulfill the requirement that minimum contract standards be made clear to prospective bidders [48 Comp. Gen. 326 (1968)]. Numerical goals were first introduced in the manning tables embodied in the Cleveland and Philadelphia plans for construction contractors (see Jones 1982), and later won the tacit approval of Congress and the courts.

Under Executive Order 11246, federal contractors agree "not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, and to take affirmative action to ensure that applicants are employed and employees are treated

during employment without regard to their race, color, religion, sex or national origin" [3 C.F.R 169 202(1) (1974)]. This language imposes two obligations: first, not to discriminate; and second, whether or not there is any evidence of discrimination, to take affirmative action not to discriminate. It is a measure of this nation's progress that the first obligation is now largely beyond debate. The redundant sounding second obligation, however, is anything but. It has provoked continual controversy, and its meaning and effect are not well understood. In the heated political arguments over whether and what affirmative action should be, mythic visions have come to overwhelm any clear conception of what affirmative action actually is. To say that this second obligation, as it has been developed in the regulations, has provoked a good deal of debate would be a considerable understatement (see also Fiss 1971 and Glazer 1975).

Reviewing the development of affirmative action into "quotas," Lawrence Silberman, former Undersecretary of Labor from 1970 to 1973, wrote:

> In practice, employers anxious to avoid inquiry from government officials concerned only with results (rather than merely with efforts) often earmarked jobs for minorities without regard to qualifications. . . . We wished to create a generalized, firm, but gentle pressure to balance the residue of discrimination. Unfortunately, the pressure numerical standards generate cannot be generalized or gentle; it inevitably causes injustice. . . . Our use of numerical standards in pursuit of equal opportunity has led ineluctably to the very quotas, guaranteeing equal results, that we initially wished to avoid. . . . Federal courts already had begun to fashion orders in employment discrimination cases which went beyond relief for those specifically discriminated against. The orders required employers found guilty of discrimination to hire in accordance with a set ratio of whites to blacks, whether or not new black applicants had suffered discrimination. Thus was introduced a group rights concept antithetical to traditional American notions of individual merit and responsibility.

This raises at least two issues. The first is that an affirmative action program without measurable results invites sham efforts and may also fail to meet the requirement of federal procurement law that prospective

bidders be informed of the minimum standards for a contract. On the other hand, numerical standards in the quest for equal opportunity open the door to an emphasis on equal results. The second issue raised is whether discrimination and its remedy should be addressed in terms of groups or individuals.

In the past, the affirmative action obligation has been criticized as being vague and open-ended. In 1967, the director of the Office of Federal Contract Compliance (OFCC), Edward Sylvester, stated: "There is no fixed and firm definition of affirmative action. I would say that in a general way, affirmative action is anything you have to do to get results. . . . Affirmative action is really designed to get employers to apply the same kind of imagination and ingenuity that they apply to other phases of their operation" (Report 1967, pp. 73-74).

To be vague concerning methods is the ideal decentralized approach, but this is also vague about the critical issue of ends. What is the goal against which results are judged: nondiscrimination or increased minority and female employment? The distinct, practical question of whether the two can be distinguished in an operational sense is, of course, one of the important questions that will concern us here.

Past Studies

The literature on affirmative action can be divided into studies of the regulatory process that finds it mortally flawed and studies of impact that find it successful. The process studies by the U.S. Commission on Civil Rights (USCCR), the General Accounting Office (GAO), and the House and Senate Committees on Labor and Public Welfare all conclude that affirmative action has been ineffective and blame weak enforcement and a reluctance to apply sanctions. For example, in its 1975 appraisal of the contract compliance program, the GAO found (p. 30) that "the almost nonexistence of enforcement actions taken could imply to contractors that the compliance agencies do not intend to enforce the program." That this is not merely politics can be judged from the fact that the Department of Labor has been sued with some measure of

success more than once for failure to enforce affirmative action properly. [See, e.g., the case of *Legal Aid Society of Alameda County v. Brennan,* 608 R2d 1319 (9th Cir. 1979), cert. denied 100 S.Ct. 3010 (1980).] Debarment, the ultimate sanction, has been used less than 30 times; debarment of the first nonconstruction contractor did not occur until 1974. The GAO and USCCR have found that other forms of regulatory pressure, such as pre-award reviews, delay of contract award, and withholding of progress payments, have not been forcefully and consistently pursued. However, as evidenced by the increased incidence of debarment and back-pay awards, enforcement did become more aggressive after 1973.

In light of the unanimity of these process studies in finding the affirmative action regulatory mechanism seriously deficient, it is surprising that the few econometric studies of the impact of affirmative action in its first years (Burman 1973; Ashenfelter and Heckman 1976; Goldstein and Smith 1976; Heckman and Wolpin 1976), all based on a comparison of EEO-1 forms by contractor status, have generally found significant evidence that it has been effective for black males. These few studies of the initial years of affirmative action (1966-73) are not directly comparable because of different specifications, samples, and periods. They do find, nevertheless, that despite weak enforcement in its early years, and despite the ineffectiveness of compliance reviews, affirmative action has been effective in increasing black male employment share in the contractor sector, but generally ineffective for other protected groups. (See Brown 1984a for a review.) These past studies are all based on data for a period that largely predates the beginning of substantial enforcement of regulations barring sex discrimination, the start of aggressive enforcement in the mid-seventies, and the major reorganization of the contract compliance agencies into the Office of Federal Contract Compliance Programs (OFCCP) in 1978.

The effects are not large, generally on the order of less than a 1 percent increase in the black male share of employment per year. However, they do imply that even with seemingly weak enforcement, affirmative action under the contract compliance program did increase the proportion of black males in federal contractor firms in the early 1970s.

The Impact of Affirmative Action on Employment

Has affirmative action been effective in increasing the employment of minorities and women? Affirmative action under the executive order applies only to federal contractors. One method of judging the effect of affirmative action is then to compare the growth of minority and female employment at federal contractor establishments with their employment growth at similar establishments that do not bear the affirmative action obligation. With the cooperation of the U.S. Department of Labor, I performed such a comparison using EEO-1 data on employment demographics reported by 68,690 establishments in 1974 and 1980. This sample includes more than 16 million employees. The results summarized here are reported at length in Leonard (1983) and (1984a).

Table 1 (reproduced from Leonard 1984a) compares the mean employment share of demographic groups in 1974 and 1980 across contractor and noncontractor establishments. Between 1974 and 1980, black male and female and white female employment shares increased significantly faster in contractor establishments than in noncontractor establishments. In Leonard (1984a), I have estimated the impact of affirmative action after controlling for establishment size, growth, region, industry, occupational and corporate structure. Even controlling for these other factors, the employment of members of protected groups grew significantly faster in contractor than in noncontractor establishments.

Expressed as an annual growth rate, black male employment is 0.62 percent greater in the contractor sector. For white males, the annual growth rate is 0.2 percent slower among contractors, so contractor status appears to shift the demand for black males relative to white males by 0.82 percent per year. The annual demand shifts relative to white males for other groups are: other minority males 1.48 percent; white females 0.66 percent; and black females 2.15 percent. These effects are significant at the 99 percent confidence level or better, and are robust across a number of specifications. The effects for black males are similar in magnitude to those previously estimated by Ashenfelter and Heckman (1976) and by Heckman and Wolpin (1976).

Table 1
Changes in Employment by Federal Contractor Status
1974 and 1980

Demographic group	Contractor status	1974 mean	1980 mean	*t*-statistics for change across status
Black	N	.053	.059	6.5
Males	Y	.058	.067	
Other	N	.034	.046	1.2
Minority males	Y	.035	.048	
White	N	.448	.413	16.4
Males	Y	.583	.533	
Black	N	.047	.059	5.7
Females	Y	.030	.045	
Other	N	.024	.036	1.1
Minority females	Y	.016	.028	
White	N	.394	.400	7.8
Females	Y	.276	.288	

SOURCE Leonard (1984a)

NOTE. The last column reports *t*-statistics for whether the change in demographic share between 1974 and 1980 differs by contractor status. N = noncontractor in 1974 (27,432 establishments), Y = contractor in 1974 (41,258 establishments).

Compliance reviews are the main enforcement mechanism; they involve an audit of employee demographics and employer's personnel procedures, with negotiations over suggested changes. Compliance reviews have played a significant role over and above that of contractor status. For example, for black males the growth rate in their employment was 3.8 percent greater in the contractor sector than in the noncontractor sector, while it was an additional 7.9 percent greater for those who had a compliance review compared to those who had not had such a review. Conversely, compliance reviews have retarded the employment growth of whites. The effect is significantly negative in the case of white females, but small and insignificant in the case of white males, whom one would have expected to bear the brunt of the adjustment. The anomalous result for white females is sensitive to specification. It is also difficult to reconcile with the positive impact of contractor status on white females, but may be influenced by a review process that asks for more than last year, rather than more than average, in a time of sharply increasing female labor supply. Direct pressure does make a difference. Simultaneity is unlikely to bias these estimates because, as we shall see, the probability of being reviewed hardly depends upon demographics.

The total impact of affirmative action on the growth rate of employment for black men among federal contractors is then the weighted average of the annual 0.62 percent shift among nonreviewed contractors and the 1.91 percent shift among reviewed contractors, or 0.84 percent per year. The corresponding demand shifts for other groups are black females 2.13 percent, minority males 1.69 percent, and white females 0.37 percent.

Regression estimates also indicate that minorities and females experienced significantly greater increases in representation in establishments that were growing and so had many job openings, irrespective of affirmative action. The elasticity of white male employment growth with respect to total employment growth is .976, significantly less than one. This indicates that members of protected groups dominate the net incoming flows in both contractor and noncontractor establishments. The supply of blacks has not greatly increased, so this suggests the importance in expanding employment opportunities of broader forces, such as Title VII, which apply to all sample establishments. The respective elasticities for black males, black females, white females, and other males

(1.22, 1.19, 1.02 and 1.09) are significantly greater than one. The efficacy of affirmative action also depends heavily on employment growth. Affirmative action has been far more successful at establishments that are growing and have more job openings to accommodate federal pressure.

Although affirmative action has lacked public consensus and vigorous enforcement, and has frequently been criticized as an exercise in paper pushing, it has actually been of material importance in prompting companies to increase their employment of blacks.

Occupational Advance

One of the major affirmative action battlefields lies in the white-collar and craft occupations. In these skilled positions, employers are most sensitive to productivity differences and have complained the most about the burden of goals for minority and female employment. It is also in this region of relatively inelastic supply that the potential wage gains to members of protected groups are the greatest.

The four econometric studies mentioned earlier, which found employment gains for blacks despite little enforcement of affirmative action in its early years, also found that while affirmative action increases total black male employment among federal contractors, it does not increase their employment share in the skilled occupations (Burman 1973; Ashenfelter and Heckman 1976; Goldstein and Smith 1976; Heckman and Wolpin 1976). These studies suggest that contractors had been able to fulfill their obligations by hiring into relatively unskilled positions. Before 1974, affirmative action appears to have been more effective in increasing employment than in promoting occupational advancement.

Some might argue that such a result is only to be expected, given a short supply of skilled minorities or females. However, even in the case of a small fixed supply, affirmative action should induce a reshuffling of skilled blacks and women from noncontractor to contractor firms, without any increase in overall supply being necessary. The long-run presumption behind affirmative action, however, is that trainable members of protected groups will be considered for promotion to skilled employment. Indeed, by the later 1970s, affirmative action was no longer as

ineffective as it may have been in its early years at increasing minority employment in skilled occupations (Leonard 1984b). This difference may reflect the increasing supply of highly educated blacks, as well as the more aggressive enforcement program that developed in the mid- to late 1970s.

Analyzing occupational advance within nine broad occupations between 1974 and 1980, Leonard (1984b) finds black males' share of employment increased faster in contractor than in noncontractor establishments in every occupation except laborers and white-collar trainees, and except for operatives and professionals these differences are significant. The impact is found in both the proportionate change in black males' share of total employment, and in the proportionate change in the ratio of black male to white male share.

The total impact of the contract compliance program, the weighted sum of contractor and review effects, shows some evidence of a twist in demand toward more highly skilled black males. The contract compliance program has not reduced the demand for black males in low-skilled occupations except for laborers. It has raised the demand for black males more in the highly skilled white-collar and craft jobs than in the blue-collar operative, laborer, and service occupations. While this may help explain why highly skilled black males have been better off than their less skilled brethren, it does not help explain why black males should be having greater difficulty over the years in finding and holding jobs. Neither employment-population ratios nor unemployment rates of blacks relative to whites have shown a marked improvement over the past two decades.

Establishments that are not part of multiplant corporations have significantly lower growth rates of employment for members of protected groups. Corporate size is probably of greater consequence than establishment size, with larger corporations showing greater increases in minority and female employment. Establishment size itself has insignificant effects on white and black males, but other males and black females grow significantly faster at larger establishments, while white females grow significantly slower. It is also important to note that the tests here also control for the skill requirements of each establishment. Establishments that are nonclerical white-collar-intensive exhibit faster employment growth for both male and female blacks and significantly slower growth for white males.

For a program lacking public consensus and vigorous enforcement, this is a surprisingly strong showing. While the gains of white females are smaller than those of blacks, it is important to keep in mind that the employment of females and minorities has been increasing in both sectors. Indeed, if the OFCCP pressured establishments to hire more females and minorities relative to their own past records rather than to industry and region averages, the observed pattern is just what we would expect to see during a period when female labor supply had been growing. Females' share would increase at all establishments because of the supply shift, and contractor establishments would be under little pressure to employ more females than noncontractors. The relatively short history of affirmative action for females may also help explain the differential impact of affirmative action across protected groups.

Affirmative action has also helped nonblack minority males, although to a lesser extent. There is evidence of a twist in demand toward Hispanic, Asian, and American Indian males in white-collar occupations, particularly in sales and clerical positions, and away from this group in operative and laborer positions. Compliance reviews have had a strong and significant additional impact in the professional, managerial, and craft occupations. The total impact of the contract compliance program on nonblack minority males is positive in the white-collar, craft, and service occupations, and in training programs. Relative to white males, affirmative action has increased the occupational status of nonblack minority males by 2 percent.

The evidence within occupations suggests that the contract compliance program has had a mixed, and often negative impact on white females. For technical, sales, clerical, craft, and trainee workers, contractor status is associated with a significant decline in white females' employment share. Compliance reviews have also often had a negative impact. While both contracts and reviews produce a significant 1 percent increase in the index of white females' occupational status, this positive impact disappears when change in white females' occupational status are compared to the relatively greater gains of white males.

Black females in contractor establishments have increased their employment share in all occupations except technical, craft, and white-collar

trainee. The positive impact of the contract program is even more marked when the position of black females is compared with that of white females.

It is possible that part of this occupational upgrading may be overstated because of biased reporting to the government, in particular the upward reclassification of minority or female-intensive occupations, as argued in the useful paper by Smith and Welch (1984). To the extent that contractors may have selectively reclassified black- and female-intensive occupations at a faster rate than did noncontractors, most studies will overstate the actual occupational advance due to affirmative action. However, this effect is unlikely to overwhelm the general direction of the results; pure reclassification would cause black losses in the lower occupations, which is generally not observed.

Moreover, this finding of occupational advance for nonwhite males is reinforced by evidence from Current Population Survey wage equations that affirmative action has narrowed the difference in earnings between the races by raising the occupational level of nonwhite males. These wage equations are reported at greater length in Leonard (1984d). These estimates of the wage effects of affirmative action offer evidence suggesting that the underlying supply of labor is not perfectly elastic. Minority male wages are higher relative to those of white males in cities and industries with a high proportion of employment in federal contractor establishments subject to affirmative action, although the effect is not always significant.

Affirmative action does not appear to have contributed to the economic bifurcation of the black community. Given increased pressure to justify the nonpromotion or discharge of blacks, fears have been raised that employers will screen blacks more intensely and be less willing to risk employing less skilled blacks. In practice, affirmative action appears to increase the demand for poorly educated minority males as well as for the highly educated. The lesson to be drawn from this evidence is that affirmative action programs work best when they are vigorouly enforced, when they work with other policies that augment the skills of members of protected groups, and when they work with growing employers.

Goals or Quotas?

Have these employment advances been achieved through the use of rigid quotas? The goals and timetables for the employment of minorities and females drawn from federal contractors under affirmative action stand accused of two mutually inconsistent charges. The first is that "goal" is really just an expedient and polite word for quota. Affirmative action has really imposed inflexible quotas for minority and female employment. The second is that these goals are worth less than the paper they are written on. Affirmative action is a game played for paper stakes and has never been enforced stringently enough to produce significant results.

Under Executive Order 11246, federal contractors are required to take affirmative action not to discriminate and to develop affirmative action plans (AAPs), including goals and timetables, for good-faith efforts to correct deficiencies in minority and female employment. The aim of this section, which summarizes Leonard (1985b), is to measure good faith, to determine what affirmative action promises are worth. Is negotiation over affirmative action goals an empty charade played with properly penciled forms, or does it in fact lead to more jobs for minorities and females in the contractor sector? If the latter is the case, are these goals so strictly adhered to as to constitute quotas? Since the reviews examined here have already been shown to be useful (Leonard 1984a), the question here is not "Are reviews effective?" but rather "Do promises extracted during the review process contribute to the impact of reviews?"

It is not beyond reason to suppose that they do not. Neither the penalties for inflating promises to hasten the departure of federal inspectors nor the prospects of being apprehended seems great. The ultimate sanction available to the government in the case of affirmative action is debarment, in which a firm is barred from holding federal contracts. The first debarment of a nonconstruction contractor did not take place until 1974, and in total only 26 firms have ever been debarred. If the OFCCP finds the establishment's affirmative action plan unacceptable, it may issue a show-cause notice as a preliminary step to high sanctions. This step has been taken in only 1 to 4 percent of all reviews (USCCR 1975,

p. 297). Of these, one-third to one-half involve basic and blatant paperwork deficiencies such as the failure to prepare or update an AAP (U.S. GAO 1975, p. 26).

The other major sanction used by the OFCCP is back-pay awarded as part of a conciliation agreement. In 1973 and 1974, $54 million was awarded in 91 settlements, averaging $63 per beneficiary (U.S. GAO 1975, p. 46). In 1980, in an even more skewed distribution, $9.2 million was awarded to 4,336 employees in 743 conciliation agreements (USCCR 1982, p. 47). These beneficiaries represented less than two-thirds of 1 percent of all protected-group employees at just the reviewed establishments. While these affirmative action sanctions have not been heavily employed, in many cases regulatory sanctions, like weapons of war, are judged most successful just when they are used the least. That does not seem to be the case here. The U.S. Commission on Civil Rights, the General Accounting Office, committees of both houses of Congress, and the courts have all concurred in the judgment that the contract compliance agencies have not made full and effective use of the sanctions at their disposal.

The low penalties are compounded by the low probability of apprehension, although the Department of Defense (DOD), upon whose review this section concentrates, had one of the most vigorous programs. In 1976 DOD is reported to have reviewed 24 percent of its identified contractors, compared to an average for all compliance agencies of 11 percent (USCCR 1977, p. 113). In 1977 DOD had a ratio of 42 contractor facilities per staff member, and a total budget of $345 per contractor (USCCR 1977, p. 107). It is striking to note that compliance reviews have not typically been targeted directly against the most blatant form of employment discrimination. An establishment's history of employment demographics has typically not played a role in the incidence of compliance reviews, for a reason as procedurally obvious as it is logically obscure: compliance officers have not generally looked at an establishment's past Affirmative Action Plans (AAPs) or EEO-1 forms in targeting reviews. Heckman and Wolpin (1976) report that reviews are esentially random with respect to the level or growth rates of an establishment's demographics. Leonard (1985b) finds evidence that establishments with

more blacks and females are actually more likely to be subsequently reviewed. These two empirical studies agree that affirmative action compliance reviews have not been targeted with greater frequency at establishments with relatively few minorities or females.

In this light, the expected penalties for making promises to the government with little regard for the likelihood of fulfilling those promises do not seem overwhelming. In such circumstances, affirmative action promises may contain little, if any, information about the establishment's future employment. On the other hand, the OFCCP may use more subtle and less easily observed pressures. Firms may care about their reputations, not only with the OFCCP, but also with their own employees and the public, and so strive to set reasonable goals. More important, firms may react to the threat of Title VII litigation, with its substantial legal costs and penalties, hanging over their heads while under affirmative action review.

The employment goals that firms agree to under affirmative action are not vacuous; neither are they adhered to as strictly as quotas. While affirmative action promises are inflated, they are not hollow. For a sample of establishments that experienced more than one compliance review during the 1970s, Leonard (1985b) compares the goals with the employment actually achieved one year later. The model year for which projections are made is 1976. Establishments on average overestimate the growth of total employment. They project 1 percent employment growth one year ahead, but on average, employment subsequently falls by 3 percent.

Neither absolute minority nor female employment increased, but both minority and female employment shares did increase. This is because the contraction in employment that occurred was almost lily-white and predominantly male. Most of the average employment decline of 27 was accounted for by white males, whose employment fell by 21. Put another way, while white males averaged 63 percent of initial employment, they accounted for 78 percent of the employment decline. Since females and minorities typically have lower seniority, they are usually found to suffer disproportionately more during a downturn. In this perspective, the finding here that white males accounted for most of the employment

decline is itself striking evidence of the impact of affirmative action. These establishments are projecting swift and substantial increases in black male employment.

These projections and actualizations can also be expressed as shares of total employment. Over time, minority and female employment shares are indeed growing, but not nearly as fast as projected. The firms project growth in minority and female employment share far in excess of their own past history, and far in excess of what they will actually fulfill. Is there then any information at all in their projections, or is the entire procedure an exercise in futility?

The administrative records of completed compliance reviews include data on past and projected employment demographics, indications of deficiencies found in affirmative action plans, and an indicator for pre-award compliance reviews in which case one might expect the government's leverage to be greater. These records also indicate successively higher levels of government pressures brought to bear: hours expended by review officers, progress reports required, conciliation process initiated, and, finally, show-cause notice issued. Each of these mileposts in the bargaining process reflects both the establishment's resistance to bureaucratic pressures and, at the same time, increasing levels of bureaucratic pressure itself. If establishment resistance can be controlled for, then these may be taken roughly as inputs into a regulatory production function. By assuming that corporate resistance is controlled for by past growth rates of protected-group employment share, and by initial notification of deficiencies, we can then ask what the marginal impact is on factors of regulatory production such as conciliation agreements and show-cause notices. These identifying assumptions are open to question. Caution should be exercised in interpreting the following results since they may be biased toward finding ineffective enforcement if enforcement has been targeted against the most recalcitrant cases.

In general, the results on the impact of various enforcement tools are mixed and often insignificant. On average, employers had not significantly altered their demographics a year later in response to pre-award reviews, interim progress reports, conciliation agreements, or show-cause notices. On the whole, there is no compelling evidence that these detailed components of the enforcement process have a significant impact on the employment of members of protected groups.

The major finding in Leonard (1985b) is that goals set in these costly negotiations do have a measurable and significant correlation with improvements in the employment of minorities and females at reviewed establishments. At the same time, these goals are not being fulfilled with the rigidity one would expect of quotas. While the projections of future employment of members of protected groups are inflated, the establishments that promise to employ more do actually employ more. The striking finding is that the affirmative action goal is the single best predictor of subsequent employment demographics. It is far better than the establishment's own past history, even controlling for the direct impact of detailed regulatory pressure.

This indicates that while establishments promise more than they deliver, the ones that promise more do deliver more, even conditioning on the past growth rate of employment share. There is significant information in the projection over and above what could have been predicted on the basis of past history. On the other hand, the projection falls far short of perfect information. For example, on average a projected 11 percentage point increase in the growth rate of black male employment share results in an actual increase of 1 percentage point, *ceteris paribus.*

Not only do establishments generally overpromise minority and female employment, they also overpromise white male employment. This reveals something of their strategy in formulating promises. They do not promise direct substitution of minority and female workers for white males; instead they promise more for all. More accurately, they promise to make room for more minority and female employees by increasing the size of the total employment pie. The first step in bringing these projections down to earth may simply be to ask the establishment whether the projected growth in total employment is reasonable.

We have a policy that appears to be effective in its whole and ineffective in its parts. Protected-group employment share does generally grow more rapidly at reviewed firms, and goals are strongly correlated with this growth. Do our results then indicate only the establishments' projections reflect variations in supply known to them rather than induced variations in demand? Alternatively, can we infer that extracting greater promises will result in greater achievement? The critical evidence is that

there is an overall response to pressure. Within labor markets of the same industry and region, reviewed contractors do better than the nonreviewed, as other work shows. As discussed here, within a given SMSA the establishments that set higher goals achieve greater growth rates of protected-group employment. My reading of this evidence is that while much of the nitpicking over paperwork is ineffective, the system of affirmative action goals has played a significant role in improving employment opportunities for members of protected groups.

The Targeting of Compliance Reviews

Affirmative action can be broadly conceived of as pursuing either antidiscrimination or job and earnings redistribution goals. That is to say, it can either pursue equality of opportunity or equality of result. Given the historical record, progress toward one goal will often entail progress toward the other. In particular, discrimination seems to be a broad enough target that it can be hit even with imperfect aim. The central question that this section, drawn from Leonard (1985a), seeks to answer is: what are the actual goals of affirmative action? The approach taken here is to infer the ends of affirmative action policy from an analysis of the historical record of actual enforcement.

Assertions concerning the ends of affirmative action are surprisingly common, especially when one realizes that only once in the past has the actual pattern of enforcement been analyzed. This pathbreaking study of Heckman and Wolpin (1976) examined the incidence of compliance reviews at a sample of 1,185 Chicago area establishments during 1972. These compliance reviews are the first, the most common, and usually the last step in the enforcement process. Heckman and Wolpin find that the probability of review is not affected by establishment size, minority employment, or change in minority employment. They discover "no evidence of a systematic government policy for reviewing contractor firms." In other words, they find an essentially random enforcement process. This first analysis of targeting studied a relatively small sample

in one city during the early 1970s, before the contract compliance program reached full stride. Do these early findings hold true for the nation as a whole after affirmative action regulations and procedures matured? Just as important, how are such results to be interpreted?

Which establishments does the OFCCP actually choose to review? Can we judge its motives from its targeting policy, and do the goals so revealed conform to those mandated in the executive order? The OFCCP has had, on paper, formal targeting systems such as the Revised McKersie System or the later EISEN system. These systems generally target in a sensible fashion against discrimination by selecting for review those establishments with a low proportion of minorities or females relative to other establishments in the same area and industry. But interviews with OFCCP officials in Washington and in the field suggest that these formal targeting systems were never really used. Instead of targeting on the basis of an establishment's past demographic record, compliance officers claim they simply reviewed the firms with the most employees, and the growing firms. This section shows which types of establishments were actually reviewed between 1974 and 1980, primarily by the Department of Defense. As such, the patterns shown here may not be indicative of current policies or practices of the OFCCP, nor of past practices of their compliance agencies. In addition, part of the patterns observed here may reflect the requirements for pre-award compliance reviews.

The model of affirmative action as an earnings redistribution program has two testable implications. One can at best offer weak support for the hypothesis, while the second can provide somewhat stronger support. The first is that no particular pressure should be applied to firms with relatively few minorities or females, as observed in Leonard (1985a). While this strongly rejects the model of affirmative action as anti-discrimination in employment, if offers weak support for the alternative hypothesis of affirmative action as earnings redistribution because it is also compatible with other models of regulatory behavior. The second implication of the earnings redistribution model is that greater pressure should be brought to bear to shift demand curves where the supply of labor is relatively inelastic. In particular, this implies a higher incidence of compliance reviews at establishments with nonclerical, white-collar-

intensive workforces. I find significant evidence that this is what the OFCCP has done.

If one thought of the OFCCP's primary concern as fighting the most blatant forms of *prima facie* employment discrimination directly in the workplace, one might then expect reviews to be concentrated at establishments with a relatively small proportion of females and black males, controlling for size, industry, and region. There is little consistent significant evidence of this in the past. In part, this may be explained by the requirement of pre-award compliance reviews. Establishments with the smallest proportion of minorities or females, *ceteris paribus,* are not consistently more likely to be reviewed for compliance with Executive Order 11246. Reviews are significantly more likely to take place, *ceteris paribus,* in nonclerical, white-collar-intensive establishments. Reviews are also more likely to occur at both large and growing establishments, where any costs to white males are likely to be more diffused.

How can the lack of a consistent targeting pattern by race or sex be explained? The larger establishments often employ a greater proportion of minorities and females. In interviews, field officers of the OFCCP have stated that they do not generally look at an establishment's past demographic record in targeting reviews. Reviewing large nonclerical, white-collar-intensive establishments with little regard for their past record of minority or female employment is consistent with an affirmative action effort that in terms of compliance review targeting is primarily concerned not with attacking the grossest *prima facie* forms of current employment discrimination, but rather with redistributing jobs and earnings to minorities and women.

The 1980s

Black economic advance faltered along a number of dimensions during the 1980s. I do not know how much of this was due to weakened affirmative action, but I do know that affirmative action under the contract compliance program virtually ceased to exist in all but name after 1980 (Leonard 1987). From a public relations perspective, the gutting

of the program had a certain artfulness. With no greater staffing or budget, the OFCCP doubled the number of compliance reviews. A wondrously invigorated bureaucracy doubling its efficiency? It is easy to go twice as fast when they are just going through the motions, with more desk reviews and fewer in-depth audits. After 1980, fewer administrative complaints were filed, back-pay awards were phased out, and the already rare penalty of debarment became an endangered species. Over the same period, staffing and real budget were reduced. This type of surface enforcement resulted not just in stagnation, but in a reversal of black advances under affirmative action. Between 1980 and 1984, both male and female black employment grew much more slowly among contractors than noncontractors (Leonard 1987). Affirmative action, such as it was, no longer aided blacks. Consider the different response before and after 1980 of black male employment growth to total establishment employment growth of 10 percent. Before 1980 this would result in 12 percent black male employment growth among noncontractors, and 17 percent among contractors. After 1980, the comparable rates are 11 percent among noncontractors and 10 percent among contractors. The reversal for black females is even more marked.

It was as though contractors were returning to a growth path they had been forced off by previous affirmative action efforts. This is discouraging news. Affirmative action seeks to give those discriminated against a chance to demonstrate their skills, and thus to break the preconceptions upon which prejudicial barriers are based. Under this model, affirmative action should serve as long-term innoculation against discrimination, and previous victims of discrimination should continue to progress even after active treatment has ceased.

The evidence supports far less optimistic views of what is at stake. The decline of black employment advances under the affirmative inaction program of the 1980s suggests either that affirmative action during the 1970s resulted in discrimination against whites, or that ongoing treatment is required to counteract the after-effects of generations of discrimination, or that there is a persistence and resiliency to the taste for discrimination against blacks.

The Impact of Title VII of the Civil Rights Act of 1964

While the central focus of this analysis has been on affirmative action under the Executive Order, it should be understood that the Executive Order has functioned within the backdrop of Title VII's Congressional mandate and substantial legal sanctions. The dominant policy has been established under Title VII. What impact then has Title VII had? Without attempting to review this question as thoroughly as I have affirmation action, I can sketch some results. For a more complete discussion, see Brown (1984a), Freeman (1981), Butler and Heckman (1977), and Smith (1978).

The broadest perspective may be gained by considering what changes have occurred in the earnings, income, occupational positions, and employment of blacks relative to whites before and after passage of the Civil Rights Act of 1964. In reviewing this evidence, Richard B. Freeman (1978, p. 3) finds that "virtually every indicator of positions shows a marked improvement in the economic status of *employed* black workers with—as has been widely noted by various analysts—gains concentrated among women, highly educated or skilled men, and young men. Virtually every indicator of positions also shows a marked acceleration in the economic status of *employed* black workers after 1964, when the U.S. anti-bias effort intensified as a result of Title VII of the Civil Rights Act of that year" (emphasis added). While a substantial part of this improvement can be attributed to the improved education of blacks (see Smith 1978), Title VII appears to have also contributed substantially and directly to improving the economic position of employed blacks at a given level of education.

While employed blacks appear to have approached parity with whites more rapidly since 1964, proportionately fewer blacks pass the initial hurdle of becoming employed. As Freeman (1978, p. 10) notes, "At the same time that there has been a marked movement toward equality of earnings between employed blacks and whites, however, there has been a distressing deterioration in the likelihood of blacks holding jobs, particularly among the young. In 1964 the black male civilian employment/population ratio stood at .73, in 1969 it was .73, and in 1979 it was .64. By contrast, for white males, the ratio went from .78 (1964) to .78

(1969) to .75 (1979). Equally striking, the youth joblessness problem of the decade was one of increasing relative worsening in the black youth positions, for reasons that no one has yet satisfactorily explained. The aggregate data thus tell two stories: improvement for the employed but a reduction in the overall employment rate, especially in the 1970s."

More recently, attempts have been made by Beller (1979) and Leonard (1984c) to measure the impact of Title VII more directly using cross-sectional data. Beller finds some evidence that EEOC efforts have reduced the gender wage gap.

Before 1972, the Justice Department was empowered to bring suit through the courts for enforcement of Title VII's provisions. The EEOC's powers were limited to conciliation and persuasion. Since 1972 the power of litigation has been entrusted to the EEOC which, in turn, can pass it on to individual plaintiffs. By such recourse to the courts, the EEOC can sometimes accomplish in years what takes the OFCCP weeks. What it gives up in speed, though, it sometimes wins back in power through the setting of sweeping legal precedents. For example, the celebrated case of *Griggs v. Duke Power* did not simply aid Griggs or affect only Duke Power. By establishing the principle of disparate impact as *prima facie* evidence of discrimination, it placed a heavier burden on all employers to avoid the appearance of discrimination.

Between 1964 and 1981, more than 5,000 cases of litigation under Title VII, many of which were private suits, were decided in the federal district courts. More than 1,700 of these were class-action suits. These are the tip of an iceberg consisting of cases settling out of court or decided in state courts, but these class-action decisions are likely to generate the most publicity, result in the largest awards, and affect the most people. What has been the impact of this Title VII litigation?

The enforcement of Title VII through the courts has contributed to a significant improvement of the employment and occupational status of blacks. In regressions of the impact of the percentage of workers in an occupation who are members of a protected group on number of Title VII class action suits per corporation, percentage of employment in an industry by state cell that is in federal contractor establishments under the affirmative action obligation, and a lagged dependent variable, Title VII leads to sometimes negative but generally insignificant changes for

white females, but to a moderate and significant improvement in the employment of blacks. The demand shifts for females may simply be swamped by the ongoing massive increase in labor supply. In addition, many of the early Title VII cases focused on racial rather than gender discrimination. The apparent ineffectiveness of antidiscrimination policy in promoting female employment remains an interesting question for research. Title VII litigation plays a significant role in increasing blacks' employment share.

In sum, these results suggest that Title VII litigation has played a significant role over and above that of affirmative action. This impact has been greater for blacks than for women, and greater for the skilled than for the unskilled.

Antidiscrimination or Reverse Discrimination?

We have seen that despite poor targeting, affirmative action has helped promote the employment of minorities and women, and that Title VII has likely played an even greater role. This raises the most important and the most controversial question: has this reduced discrimination,or has it gone beyond and induced reverse discrimination against white males? This is also the question on which our evidence is least conclusive. The finding of decreased employment growth for white males is not sufficient to answer the question, since it is consistent with both possibilities.

The integration of the American workforce, by race and gender, has been among the most far-reaching and controversial goals of domestic policy in the past two decades. Some have argued that integration can be achieved only at great cost in terms of reduced productivity and profits, that forced equity will entail reduced productivity. Opponents of affirmative action have argued that employers were discriminating on the basis of merit, not on the basis of race or gender. If their contention is correct, then government policies that favor the hiring and promotion of minorities and women should cause a decline in their relative productivity. Equal pay restrictions will compound the inefficiency. The hypothesis inherent in this argument is that the relative marginal productivities of minorities and females have declined as their employment has increased and have not moved toward equality with relative wages.

Using estimates of production functions relating output to inputs for the manufacturing sector, Leonard (1984c) finds that relative minority and female productivity increased between 1966 and 1977, a period coinciding with government antidiscrimination policy to increase employment opportunities for members of these groups. There is no significant evidence here to support the contention that this increase in employment equity has had marked efficiency costs. The relative marginal productivities of minorities and women have increased as they have progressed into the workforce, suggesting that discriminatory employment practices have been reduced.

If we had observed that relative minority or female productivity fell while relative minority or female wages increased, one might suspect that government pressure under Title VII and Executive Order 11246 (affirmative action) had led to reverse discrimination. I find no significant evidence of reverse discrimination, nor of any significant decline in the relative productivity of minorities or females. Direct tests of the impact of governmental antidiscrimination and affirmative action regulation on productivity find no significant evidence of a productivity decline. These results suggest that antidiscrimination and affirmative action efforts have helped to reduce discrimination without yet inducing significant and substantial reverse discrimination. However, the available evidence is not yet strong enough to be compelling on either side of this issue. Since the productivity estimates are not measured with great precision, strong policy conclusions based on this particular result should be resisted.

Conclusion

The policy of affirmative action has had a short and turbulent history in this country. Of all the social programs that grew during the sixties, it has perhaps enjoyed the least consensus. Its bureaucratic organization and body of regulations have undergone change at frequent intervals since its inception. While the targeting of enforcement could be improved, and while the impact of affirmative action on other groups is still subject to question, the evidence in this study is that affirmative action and Title VII can be successful in promoting the integration of blacks into the American workplace.

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